

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Escrow Agent License of:

3 No. 09F-BD008-BNK

4 **ARIZONA TITLE AGENCY, INC.**  
3131 E. Camelback Road, Suite 125  
5 Phoenix, AZ 85016

**SUPERINTENDENT'S FINAL  
DECISION AND ORDER**

6 Respondent.

7 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the  
8 record in this matter, including the Administrative Law Judge Decision attached and incorporated  
9 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of  
10 Law and Order as follows:

11 **ORDER**

12 IT IS ORDERED that Respondent's Escrow Agent License Number EA 0017300 is  
13 revoked effective as of the date of this Order.

14 IT IS FURTHER ORDERED that a civil money penalty in the amount of fifty thousand  
15 dollars (\$50,000.00) under A.R.S. § 6-132, a late fee of two thousand two hundred fifty dollars  
16 (\$2,250.00) under A.R.S. § 6-816(B), and an examination fee in the amount of six thousand five  
17 hundred thirty two dollars and fifty cents (\$6,532.50) under 6-122(B)(3) is assessed.

18 **NOTICE**

19 The parties are advised that this Order becomes effective immediately and the provisions of  
20 this Order shall remain effective and enforceable except to the extent that, and until such time as,  
21 any provision of this Order shall have been modified, terminated, suspended, or set aside by the  
22 Superintendent or a court of competent jurisdiction.

23 DATED this 20th day of November, 2008.

24 

25 Felecia Rotellini  
26 Superintendent of Financial Institutions  
27  
28

1 ORIGINAL filed this 20<sup>th</sup> day of  
2 NOV, 2008 in the office of:

3 Felecia Rotellini  
4 Superintendent of Financial Institutions  
5 Arizona Department of Financial Institutions  
6 ATTN: June Beckwith  
2910 North 44th Street, Suite 310  
Phoenix, Arizona 85018

7 COPY of the foregoing mailed/hand delivered  
8 This same date to:

9 Thomas Shedden, Administrative Law Judge  
10 Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, AZ 85007

11 Craig Raby, Assistant Attorney General  
12 Office of the Attorney General  
1275 West Washington  
13 Phoenix, AZ 85007

14 Robert D. Charlton, Assistant Superintendent  
15 Richard Fergus, Licensing Division Manager  
16 Thomas Fink, Senior Examiner  
Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

17 AND COPY MAILED SAME DATE by  
18 Certified Mail, Return Receipt Requested, to:

19 Jerrold G. Hauptman  
20 Owner  
21 Mercury Companies, Inc.  
1515 Arapaho Street  
22 Tower 1, Suite 1400  
Denver, Colorado 80202

23 BY:   
24

1                                   **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 In the Matter of the Escrow Agent License  
4 of:

**No. 09F-BD008-BNK**

5 ARIZONA TITLE AGENCY, INC.  
6 3131 E. Camelback Road, Suite 125  
7 Phoenix, AZ 85016

**ADMINISTRATIVE LAW JUDGE  
DECISION**

8  
9  
10                                   Respondent

11                   **HEARING:** October 8, 2008

12                   **APPEARANCES:** No one appeared for Arizona Title Agency Inc.; Assistant  
13 Attorney General Craig Raby appeared for the Arizona Department of Financial  
14 Institutions

15                   **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden  
16

17 The Arizona Department of Financial Institutions issued to Respondent an Order of  
18 Summary Suspension and Notice of Hearing. Based on the evidence of record, the  
19 Administrative Law Judge makes the following Findings of Fact, Conclusions of Law  
20 and Order:

21                                   **FINDINGS OF FACT**

- 22 1. Arizona Title Agency, Inc. ("Respondent") holds escrow agent License No. EA  
23 0017300 issued by the Arizona Department of Financial Institutions (the "Department").  
24 2. Respondent is a wholly owned subsidiary of Mercury Companies, Inc. ("Mercury"),  
25 a Colorado corporation. Mr. Jerrold Hauptman and Ms. Patty Hauptman are Mercury's  
26 principals; Mr. Hauptman is Mercury's Chairman and Ms. Hauptman is its CEO.  
27 3. On August 12, 2008 the Department issued to Respondent an Order of  
28 Summary Suspension and Notice of Hearing and Complaint.

29  
30  

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

1 4. The Notice of Hearing set the matter for hearing at 9:00 a.m. October 8, 2008 at  
2 the Office of Administrative Hearings.

3 5. At the scheduled hearing time no representative appeared for Respondent. After  
4 a 15 minute grace period the Administrative Law Judge convened the hearing in  
5 Respondent's absence.

6 6. CT Corporation Systems is the statutory agent for Respondent and was  
7 provided a copy of the Complaint and Notice of Hearing by certified mail. Mr. Hauptman  
8 was also provided a copy of the Complaint and Notice of Hearing by certified mail. See  
9 Exhibits 24 – 27.

10 7. The Notice of Hearing and Complaint alleges violations of A.R.S. §§ 6-832(A)  
11 and (B), 6-123(3), 6-837(B), and 6-832(A) and gave notice of possible assessments of  
12 a civil penalty under A.R.S. § 6-132, late fees under A.R.S. § 6-816(B), and an  
13 examination fee under A.R.S. § 6-125(B)(4).

14 8. The Department presented the testimony of Senior Examiner Thomas Fink,  
15 Assistant Superintendent Thomas Giallanza and Assistant Superintendent Robert  
16 Charlton, and that of Mr. Danny Sullivan, Ms. Donna McGill and Ms. Karen Summers  
17 who are former employees of Respondent. All six witnesses provided credible  
18 testimony.

19 Audit Statement for 2007

20 9. As of the hearing date, Respondent had not filed its audited financial statement  
21 for 2007, which was due on April 30, 2008. See A.R.S. § 6-832.

22 10. A.R.S. § 6-816(B) allows for a \$25.00 per day penalty for each day the  
23 statement is late. The Department requested a penalty of \$2,250 based on  
24 Respondent's failure to file as of the time that the Notice of Hearing was issued.

25 11. The audited financial statement provides an independent opinion of  
26 Respondent's financial condition, including information on shareholder equity and  
27 earnings. Mr. Fink's opinion is that failure to submit the audit statement is a major  
28 violation.

Closing of Business in Arizona

12. In an email dated July 30, 2008 Mercury informed its employees that it would no longer fund its operations in Arizona, Texas and California. Mercury's internet website conveyed the same information. See Exhibits 3 and 4.

13. On July 30, 2008, Mr. Fink and others from the Department went to Respondent's main location and confirmed that Respondent had closed; a sign on Respondent's door directed people to call First American Title Company. See also Exhibit 11 (Assignment of Escrow Accounts).

14. Mr. Fink spoke to Mr. Danny Sullivan who was at that time president of Respondent; Mr. Sullivan was cooperating with the Department until he was fired by Respondent.

15. Mr. Sullivan told Mr. Fink that on July 29, 2008 Mercury informed Respondent that it would be closing. Mr. Sullivan also told Mr. Fink that Mercury had informed Respondent that its employees would not be receiving paychecks that were due.

16. At hearing, Mr. Sullivan confirmed that he did not receive his last paycheck and testified that to his knowledge none of Respondent's employees received their last paychecks.

17. Ms. McGill and Ms. Summers each testified that they had not received their final paychecks and that they had not been paid for accrued leave time.

18. On August 12, 2008 the Department received a Complaint from Mr. Raymond Norstrom alleging that Respondent's check for the July 2008 rent had been returned for insufficient funds. See Exhibit 23. Exhibit 23a is a copy of the returned check.

19. Mr. Fink sent Respondent a letter dated July 30, 2008 that described the procedures for Respondent to surrender its license as provided for in A.R.S. § 8-838. Mr. Fink's letter requested that Respondent provide the following information:

1. A certified copy of the resolution of the escrow agent's board of directors or a verified statement indicating its intent to surrender the escrow agent license.
2. A copy of the final reconciliation for all escrow bank accounts including copies of the reconciliation form, bank

statement, outstanding checks list, deposit in transit list, trial balance of escrows and any adjusting entries.

3. A list of escrow bank accounts transferred to buyer with copies of the checks, evidencing the transfer of the escrow funds to buyer.
4. A list of the open and closed escrow account files transferred to buyer.
5. A statement indicating that no escrow business has been accepted since the effective closing date.
6. A copy of the sales agreement between agent and buyer for the sale of the escrow business.
7. A copy of the letter, advising them of the transfer of escrow accounts to the new buyer, sent to the parties of the open escrows.
8. The original escrow agent license.
9. A report of the arrangements made for storage of the closed escrow files. This information should include a list of all the files placed in storage, the location of the files and the name of the person to contact for retrieval.
10. If applicable, final payment to the Arizona Escrow Recovery fund for the last quarter.

See Exhibit 7.

20. As of the hearing date, the Department had not received from Respondent: a final reconciliation for all escrow bank accounts; its bank statements; an outstanding-checks list; a deposit-in-transit list; a trial balance of escrows or any adjusting entries. Mr. Fink testified that this information is important to ensure that Respondent has sufficient financial resources to meet its obligations and to show that the funds held in escrow are accounted for.

21. As of the hearing date, the Department also had not received from Respondent: a list of accounts transferred to First American; a statement showing that no new

1 business had been accepted since closing; or the required information related to the  
2 storage of closed files.

3 22. On August 4, 2008, Mr. Fink sent via certified mail a letter to Mr. Sullivan  
4 requesting more information on the closed escrow files and a request that Respondent  
5 provide the Department with the 2007 audited financial statement. See Exhibit 9.

6 23. Copies of the August 4<sup>th</sup> letter were also sent by certified mail to Hon W. Chan,  
7 Senior Vice President and Counsel to Mercury; Mr. Hauptman; Ms. Hauptman; and  
8 Walter Fitzsimmons, the CFO of Mercury. The Department received the signed return  
9 receipts from these letters. See Exhibit 9a.

10 24. Mr. Hauptman, Ms. Hauptman, and Mr. Fitzsimmons did not respond to the  
11 August 4<sup>th</sup> letter. Mr. Fink did hear from Mr. Chan in response to the August 4<sup>th</sup> letter,  
12 but Mr. Chan was fired by Mercury after which there was no further communication from  
13 him.

14 25. Mercury has filed for bankruptcy but Mr. Fink did not know the date of filing.

15 26. In light of Respondent's financial problems, the Department conducted an  
16 examination of Respondent, the cost of which was \$6,532.50. See Exhibit 28.

#### 17 The Summary Suspension

18 27. Mr. Giallanza testified that the Department determined that Respondent was an  
19 imminent threat to the public health, safety and welfare because Respondent was not  
20 cooperating with the Department with respect to Respondent's financial status and  
21 because the Department did not have sufficient information to reconcile Respondent's  
22 accounts. This created a concern about protecting funds that were being held in escrow  
23 by Respondent. Consequently Respondent's license was suspended.

24 28. Respondent's failure to submit its 2007 audit statement, its failure to submit the  
25 required records related to its closure, and its lack of financial capability are all  
26 violations of the law and, in Mr. Giallanza's opinion, these are all serious issues.

#### 27 Mr. Charlton's Testimony

28 29. Mr. Charlton confirmed that the violations Respondent has committed are  
29 serious and warranted the summary suspension and revocation of Respondent's  
30 license.

1 30. Mr. Charlton made attempts to contact Mr. Hauptman and Ms. Hauptman, but  
2 they did not respond to his messages.

3 31. Mr. Charlton's opinion is that in addition to revocation, a civil penalty is  
4 warranted because Mercury has indicated that it would like to return to Arizona. Mr.  
5 Charlton recommended a penalty of at least \$50,000 and the Department's fees, which  
6 would help compensate the state and is less than the statutory maximum of \$5,000 per  
7 day per violation that could be imposed.

### 8 CONCLUSIONS OF LAW

9 1. The Department bears the burden of persuasion. See A.R.S. § 41-1092.07(G)(2).  
10 The standard of proof on all issues is that of a preponderance of the evidence. See  
11 A.A.C. R2-19-119.

12 2. A preponderance of the evidence is "[e]vidence which is of greater weight or more  
13 convincing than the evidence which is offered in opposition to it; that is, evidence which  
14 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S  
15 LAW DICTIONARY 1182 (6<sup>th</sup> ed. 1990).

16 3. The preponderance of evidence shows that Respondents were provided proper  
17 notice of the hearing because the Department sent the Notice of Hearing to Respondent's  
18 statutory agent and to Mr. Hauptman. See A.R.S. § 41-1092.04.

19 4. The preponderance of evidence shows that Respondent's statutory agent  
20 received the Notice of Hearing and that Mr. Hauptman received the Notice of Hearing.

21 5. The Department has established that Respondent has failed to file its audited  
22 financial statement for the year ending on December 31, 2007, which is violation of  
23 A.R.S. § 6-832(A) and (B).

24 6. The Department has established that Respondent failed to provide to the  
25 Department all information requested by the Department's letter of July 30, 2008, which  
26 is a violation of A.R.S. §§ 6-123(3) and 6-837(B).

27 7. Each instance of Respondent's failure to furnish to the Department the  
28 information required by statute is a basis to revoke Respondent's license under A.R.S.  
29 § 6-817(A)(8).  
30

1 8. The Department has established that Respondent does not have the financial  
2 resources to adequately serve the public, which is a basis to revoke Respondent's  
3 license under A.R.S. § 6-817(A)(10).

4 9. Respondent's failure to comply with statutes governing escrow agents is an  
5 additional basis to revoke its license under A.R.S. § 6-817(A)(2).

6 10. Considering the number of Respondent's statutory violations and, in view of  
7 Respondent's failure to cooperate with the Department, and Respondent's failure to  
8 appear at the hearing, the Department has established that imposition of a civil penalty  
9 in the amount of \$50,000.00 is appropriate. See A.R.S. § 6-132.

10 11. The Department has established that it is appropriate to assess Respondent a  
11 late fee of \$2,250.00 for Respondent's failure to file an audited financial statement for  
12 the year ending December 31, 2007 (\$25.00 a day for ninety days past the April 30,  
13 2008 deadline). See A.R.S. § 6-816(B).

14 12. The Department has established that it is appropriate to assess against  
15 Respondent an examination fee in the amount of \$6,532.50 for the Department's  
16 Examination of Respondent. See A.R.S. § 6-122(B)(3) and § 6-125(B)(4).

17 **RECOMMENDED ORDER**

18 **IT IS ORDERED** that the Order of Summary Suspension against Arizona Title Agency  
19 Inc. (License No. EA 0017300) is affirmed;

20 **IT IS FURTHER ORDERED** that Arizona Title Agency Inc. (License No. EA 0017300) is  
21 revoked;

22 **IT IS FURTHER ORDERED** that Arizona Title Agency Inc. must pay to the Department  
23 a \$2,250.00 late fee for failing to file its 2007 audit statement on time;

24 **IT IS FURTHER ORDERED** that Arizona Title Agency Inc. must pay to the Department  
25 a \$6,532.50 fee for the Department's Examination of Arizona Title Agency Inc., and

26 **IT IS FURTHER ORDERED** that within 30 days of this Order Arizona Title Agency Inc.  
27 must pay to the Department a civil penalty of \$50,000.00.  
28  
29  
30

1  
2  
3 Done this day, October 27, 2008

4 

5 Thomas Shedden  
6 Administrative Law Judge

7  
8 Original transmitted by mail this  
9 27 day of October, 2008, to:

10  
11 Felecia A. Rotellini, Superintendent  
12 Arizona Department of Financial Institutions  
13 ATTN: Susan Longo  
14 2910 N. 44th Street, Suite 310  
15 Phoenix, AZ 85018

16  
17 By 